

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2005-0026, Nelson Mauricio Lopez & a. v. Nationwide Mutual Insurance Company, the court on December 2, 2005, issued the following order:**

The defendant, Nationwide Mutual Insurance Company, appeals the trial court's order granting the declaratory judgment petition filed by the plaintiffs, Nelson Mauricio Lopez and Wilbert David Lopez. We reverse and remand.

The issue on appeal is whether the trial court correctly ruled that neither Exclusion 5(a) nor Exclusion 6 in the applicable policy applied to the plaintiffs' claims for coverage.

The interpretation of insurance policy language is a question of law for this court to decide. Krigsman v. Progressive N. Ins. Co., 151 N.H. 643, 645 (2005). We construe the language of an insurance policy as would a reasonable person in the position of the insured based upon a more than casual reading of the policy as a whole. *Id.* Policy terms are construed objectively, and where the terms of a policy are clear and unambiguous, we accord the language its natural and ordinary meaning. *Id.* We need not examine the parties' reasonable expectations of coverage when a policy is clear and unambiguous. *Id.*

Exclusion 5(a) excludes coverage for bodily injury to "any person eligible to receive any benefits required to be provided or voluntarily provided by any **insured** under . . . workers' compensation . . . or any similar law." Exclusion 6 precludes coverage for bodily injury to "an employee of an **insured** while engaged in employment." Exclusion 6 provides, however, that there is coverage for an employee "at **your** home who is not, or is not required to be, covered by any workers' compensation law."

In construing these exclusions, the trial court declined to "graft the definitions and statutory provisions provided in the New Hampshire Workers' Compensation statutory scheme." Thus, the court construed both exceptions without reviewing the relevant provisions of that law. For instance, the court construed Exception 5(a) without reviewing whether the plaintiffs were eligible to receive "any benefits required to be provided or voluntarily provided by any insured" under the workers' compensation law. It construed Exception 6 without reviewing whether the plaintiffs were employees who were not, or were not required to be, covered by the workers' compensation law. This was error.

The plain language of both exceptions required the court to apply the pertinent provisions of the workers' compensation law. Only by so doing could the court determine whether the plaintiffs were eligible for, and the insured required to provide, workers' compensation benefits. Accordingly, we reverse and remand for further proceedings consistent with this order. We decline the parties' invitation to interpret and apply the applicable workers' compensation law provisions to the facts of this case in the first instance.

The plaintiffs argue that the defendant failed to preserve its appellate arguments for our review. The record does not support this assertion. The record shows that the defendant adequately raised its appeal issues to the trial court at trial and in its motion for reconsideration. Moreover, at oral argument, the plaintiffs admitted that the defendant raised its appeal issues in its briefs to the trial court. Our rules regarding the need to preserve appeal issues require nothing more.

Reversed and remanded.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox,  
Clerk**